REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2376
(CTA Case No. 9000)

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

- versus -

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Respondent.

Promulgated:
SEP 29 2022 1:20 pm

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on November 16, 2020 by petitioner, Commissioner of Internal Revenue against respondent, First Philippine Industrial Corporation praying that the Decision dated February 24, 2020[2] and Resolution dated October 9, 2020,[3] rendered by the Second Division of this Court (Court in

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[1] EB Docket, pp. 7 to 24.

[2] Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr., while Associate Justice Jean Marie A. Bacorro-Villena registered a Concurring and Dissenting Opinion, EB Docket, pp. 29 to 78; Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1738 to 1787.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Jean Marie A. Bacorro-Villena; EB Docket, pp. 79 to 87; Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1821 to 1829.

Division), in CTA Case No. 9000, be reversed and set aside. The dispositive portions thereof respectively read as follows:

Decision dated February 24, 2020:

"**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency tax assessments under the FLD-FAN dated June 27, 2014 for taxable year 2009 in the amount of ₱160,199,415.34 are **CANCELLED and SET ASIDE.**

SO ORDERED."

Resolution dated October 9, 2020:

"**WHEREFORE,** premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 24 February 2020), is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) with authority, among others, to collect all national internal revenue taxes and to decide disputed tax assessments and refunds of internal revenue taxes, fees or other charges in relation thereto, with office address at the Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent First Philippine Industrial Corporation (FPIC) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the Ground Floor, Benpres Building, Exchange Road corner Meralco Avenue, Pasig City, Philippines.

During the conduct of the audit of FPIC, the latter's comptroller, Ms. Ana Maria D. Del Rosario, executed *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code,* which include the following:

a. Waiver dated September 7, 2012, purportedly extending the CIR's period of assessment until December 31, 2012, which was accepted by then Officer-in-Charge Assistant Commissioner for Large Taxpayers Service Alfredo V. Misajon (OIC-ACIR Misajon) on September 18, 2012; and

b. Waiver dated November 27, 2012, purportedly extending respondent's period of assessment until June 30, 2013, which was accepted by OIC-ACIR Misajon on December 19, 2012.

On June 9, 2014, FPIC received a copy of the *Preliminary Assessment Notice* (PAN) dated June 5, 2014 issued by the BIR which stated that after investigation, FPIC has been found liable for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), final tax (FT), fringe benefits tax (FBT), and documentary stamp tax (DST) for taxable year 2009 in the total amount of ₱150,082,305.80.

FPIC then filed, on June 24, 2014, a *Reply* dated June 23, 2014 to the PAN, with corresponding supporting documents, which opposed the assessments contained in the PAN.

On June 30, 2014, FPIC received a copy of the *Formal Letter of Demand with Final Assessment Notice* (FLD-FAN) dated June 27, 2014, which contained deficiency assessments in the total amount of ₱160,199,415.34, inclusive of interests and penalties, broken down as follows:

Assessment No.	Type of Tax	Amount
IT-116-LOA-00000054-09-14-978	IT	₱113,668,077.39
VT-116-LOA-00000054-09-14-979	VAT	4,921,155.91
WC-116-LOA-00000054-09-14-980	WTC	33,443,935.34
WF-116-LOA-00000054-09-14-981	FT	6,425,054.80
WR-116-LOA-00000054-09-14-982	FBT	1,638,865.83
DS-116-LOA-00000054-09-14-983	DST	102,326.07
Total Deficiency Assessment		₱160,199,415.34

FPIC filed a *Protest to Assessments,* with supporting documents attached, on July 30, 2014.

Thereafter, FPIC filed a *Petition for Review* on February 25, 2015, docketed as CTA Case No. 9000, entitled as *"First Philippine*

/YO

Industrial Corporation, petitioner vs. Commissioner of Internal Revenue, respondent." The said case was initially raffled to the First Division of this Court (or Court in Division).

Thereafter, the CIR filed his *Answer* on May 13, 2015 interposing the following special and affirmative defenses, to wit:

1) The waivers, duly executed by FPIC's VP-Comptroller, Ana Maria S. Del Rosario, extended the period to assess FPIC;

2) FPIC was not and was never deprived of its constitutionally protected right to due process;

3) The CIR has complied with the auditing rules and procedures as prescribed in the issuances of the BIR;

4) There was no violation of FPIC's right to speedy disposition of cases;

5) FPIC is liable for deficiency IT, VAT, WTC, FT, FBT and DST; and

6) It is incumbent upon FPIC to file the necessary motion to suspend the collection of tax.

After the Pre-Trial Conference held on June 15, 2016, the parties filed their *Joint Stipulation of Facts and Issues* on July 11, 2016. On August 30, 2016, the Court in Division issued a Pre-Trial Order thereby terminating the pre-trial.

During trial, FPIC presented the four (4) witnesses, namely: (1) Atty. Eileen C. Pangalangan-Pardo, FPIC's Assistant Corporate Secretary; (2) Ana Maria S. Del Rosario, former Vice President for Comptroller & Office Strategy Management of FPIC; (3) Maria Dolores S. Santos, former Supervising Accountant of FPIC; and (4) Atty. Maria Myla Maralit, the Court-commissioned Independent Certified Public Accountant (ICPA).

Thereafter, FPIC filed its *Formal Offer of Evidence* on March 7, 2017, with *Comment (Re: Petitioner's Formal Offer of Exhibits)* filed by the CIR. The Court in Division resolved FPIC's Formal Offer of

Evidence in the Resolutions dated October 24, 2017[4] and April 30, 2018.[5]

Pursuant to *CTA Administrative Circular No. 02-2018* dated September 18, 2018, reorganizing the three (3) Divisions of the Court, CTA Case No. 9000 was transferred to the Second Division in the Order dated September 26, 2018.

For his part, the CIR presented as his sole witness, Revenue Officer Olivia Sison.

On December 10, 2018, the CIR filed his *Formal Offer of Evidence*. The Court in Division admitted all of his exhibits in the Resolution dated January 28, 2019.

After the filing of FPIC's Memorandum on April 29, 2019, and the CIR's Memorandum on May 2, 2019, CTA Case No. 9000 was submitted for decision on May 20, 2019.

Subsequently, on February 24, 2020, the Court in Division rendered the assailed Decision[6], granting the Petition for Review in CTA Case No. 9000.

Aggrieved, the CIR filed a *Motion for Reconsideration (Decision dated 24 February 2020)* on March 12, 2020 with *Comment (on Respondent's Motion for Reconsideration)* filed by FPIC on July 27, 2020.

In the assailed Resolution dated October 9, 2020[7], the Court in Division denied the CIR's Motion for Reconsideration for lack of merit.

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[4] The First Division admitted some of FPIC's exhibits, except for the following: (1)Exhibits "P-506", "P-404", and "P-405", for failure to correspond with the document actually marked; (2) Exhibit "P-506-A", for being a sub-marking of Exhibit "P-506", which has been denied admission; and (3) Exhibits "P-52", "P-53", "P-53-A", "P-53-B", "P-53-C", "P-56-D", "P-53-E", "P-53-F", "P-54", "P-55", and "P-56", for failure to identify, considering that they are identified in the Judicial Affidavit marked as "Exhibit P-506".

[5] FPIC filed its *Motion for Partial Reconsideration [Re: Resolution dated October 24, 2017]* on November 9, 2017. Thus, in the Resolution dated April 30, 2018, the First Division granted the said Motion for Partial Reconsideration, and admitted Exhibits "P-52", "P-53-A", "P-53-B", "P-53-C", "P-53-D", "P-53-E", "P-53-F", "P-54", "P-55", "P-56", "P-404", "P-405", "P-506" and "P-506-A".

[6] EB Docket, pp. 29 to 73; Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1738 to 1787.

[7] EB Docket, pp. 79 to 87; Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1821 to 1829.

On October 29, 2020, the CIR filed via registered mail a *Motion for Extension of Time To File Petition for Review*[8] praying for an additional period of fifteen (15) days from October 29, 2020, or until November 13, 2020, to file his Petition for Review.

In the Minute Resolution dated November 17, 2020,[9] the Court *En Banc* granted the CIR's Motion for Extension of Time To File Petition for Review giving the CIR a final and non-extendible period of fifteen (15) days from October 29, 2020, or until November 13, 2020, within which to file his Petition for Review.

Subsequently, on November 16, 2020,[10] the CIR filed his Petition for Review.[11]

Thereafter, the Court *En Banc* ordered FPIC to file its Comment on the Petition for Review within ten (10) days from notice.[12] On June 7, 2021, FPIC filed its *Comment (Re: Commissioner of Internal Revenue's Petition for Review dated November 16, 2020).*[13]

On June 24, 2021, the Court *En Banc* referred the present case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for initial appearance, pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[14]

On September 27, 2021, PMC-CTA issued a *Back to Court*[15] Order indicating the refusal of mediation by FPIC, attaching thereto a Manifestation filed by FPIC praying for the termination of the mediation proceedings. Thus, the instant case was returned to the Court *En Banc*.

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[8] EB Docket, pp. 1 to 4.
[9] EB Docket, p. 6.
[10] The last day of the extended period granted by the Court *En Banc* on November 13, 2020 fell on a Friday. However, the Supreme Court declared a work suspension in the Judiciary brought about by Typhoon Ulysses. The next working day was on November 16, 2020. Hence, the Petition for Review was timely filed.
[11] EB Docket, pp. 7 to 21.
[12] Resolution dated March 22, 2021, EB Docket, pp. 107 to 108.
[13] EB Docket, pp. 109 to 122.
[14] EB Docket, pp. 124 to 125.
[15] EB Docket, pp. 126 to 129.

In the Resolution dated November 2, 2021, the instant case was submitted for decision.[16] Hence, this Decision.

ISSUES

The CIR raises the following issues for resolution of the Court *En Banc*, to wit:

I. Whether or not the Court in Division erred when it granted a relief that was not prayed for by FPIC.

II. Whether or not the Court in Division erred in ruling that prescription has set in due to the invalidity of waivers.

III. Whether or not the Court in Division erred in ruling that the FLD and FAN are void because they failed to demand payment thereof within a specific period."[17]

The CIR's arguments:

The CIR contends that the validity of the FLD was never questioned in the Petition for Review filed by FPIC, Pre-Trial Brief, JSFI, or defined by the Court in Division in the Pre-Trial Order. Hence, the Court in Division erred when it ruled upon an issue that was never raised. Allegedly, the CIR was denied procedural and substantive due process as he was neither heard nor given the opportunity to be heard on the particular issue.

According to the CIR, Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (RRCTA) was intended to allow the Court to resolve the main issue under the proper perspective, not to resolve as a main issue as a matter not derived from the pleadings.

The CIR claims that achieving an orderly disposition of cases under the RRCTA is not synonymous with violating litigant's basic right to fair play and due process. Moreover, it does not also mean disregarding the rules on pre-trial.

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[16] EB Docket, pp. 131 to 132.
[17] Petition for Review, EB Docket, pp. 9 to 14.

Granting for the sake of argument that the Court may grant a relief that was not prayed for, the CIR asserts that the Court in Division erred in ruling that prescription has set in due to the invalidity of waivers.

Citing the ruling in the CTA case *Liberty Flour Mills, Inc. vs. Commissioner of Internal Revenue*,[18] the CIR argues that Revenue Memorandum Order No. (RMO) 20-90, being an RMO, is just an internal issuance containing directives and does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require. As such, the subject Waivers need not strictly comply with the said RMO.

Moreover, the CIR claims that considering that under the assessment stage, the BIR is still in the process of determining the tax liability of the taxpayer. Hence, it is only logical that the waiver does not specify the particular taxes to be assessed nor the amount thereof.

Likewise, the CIR asserts that the FLD-FAN was issued in accordance with the National Internal Revenue Code of 1997, as amended, and the pertinent rules and regulations. Allegedly, the FLD-FAN has fixed and definitely set the deficiency tax liabilities of FPIC. The basic tax deficiency, as well as the surcharge and interest, were already fixed in said FLD-FAN.

The CIR explains that the phrase "be adjusted if paid beyond the date specified therein" is but a safeguard in case FPIC files its protest or pays the amount beyond the period provided; and that it is rudimentary that interests be adjusted depending on the amount due is paid. Hence, the same shall not be interpreted to mean that the amount is not definite since the computation is already provided in the FLD. Otherwise, all tax liabilities will be void simply by the fact that the CIR reserves the government's right to charge interest on delinquent tax liabilities. Furthermore, the CIR claims that such a condition is not in the rules, and hence lacks any legal basis.

The CIR further submits that Section 249 of the NIRC of 1997, as amended, states that the imposition of the interest shall continue until full payment of the tax liabilities.

[18] CTA Case No. 9603.

Allegedly, the doctrine laid down in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[19] and *Commissioner of Internal Revenue vs. Menguito*[20] should be revisited.

Lastly, the CIR points out that as correctly observed by Associate Justice Jean Marie A. Bacorro-Villena in her Concurring and Dissenting Opinion, the FLD together with its attached assessment notice clearly contained the due date, which is July 15, 2014.

FPIC's counter-arguments:

FPIC submits that the Court in Division did not err when it granted a relief that was not prayed for by FPIC. According to FPIC, the validity of the FLD is part of the assessment, which informs the taxpayer in writing of the factual and legal bases. As such, the issue of taxpayer's liability for IT, VAT, WTC, FT, FBT and DST for TY 2009 raises the question as to whether the assessment embodied in the FLD, was valid.

FPIC further asserts that based on Section 1, Rule 14 of the RRCTA, the CTA possesses the jurisdiction to rule on related issues necessary to achieve an orderly disposition of the case. In this case, the validity of the FLD is necessary to settle the central issue of FPIC's tax liability.

Moreover, FPIC argues that the Supreme Court has been explicit as regards the mandatory nature of the guidelines laid down in RMO No. 20-90, and the necessity for its faithful compliance. As duly established during trial, the subject waivers were invalid for a number of reasons, including the lack of authority of the signatory to execute the same on behalf of FPIC, as well as the lack of authority of the Revenue Officer who accepted them on behalf of the CIR.

Finally, FPIC submits that the FLD and FAN are void because they failed to demand payment thereof within a specific period.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

[19] G.R. No. 215957, November 9, 2016.
[20] G.R. No. 167560, September 17, 2008.

The CTA is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

Contrary to the CIR's argument, the Court in Division did not violate the CIR's right to due process nor did it disregard the application of the rules of procedure when it ruled on the defects of the Waiver and in the assessment notices even if the same were not raised by the parties.

It bears stressing that the CTA is empowered to rule on related issues although the same were not raised in any of the parties' respective pleadings pursuant to Section 1, Rule 14 of the RRCTA, which reads as follows:

> " RULE 14
>
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. *Rendition of judgment.* – xxx xxx xxx
>
> **"In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."** (*Emphasis supplied*)

Pertinently, no less than the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[21] bolsters the Court's authority on deciding an issue which was not raised by the parties, to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to

[21] G.R. No. 183408, July 12, 2017.

achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. *Rendition of judgment.* – x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda**. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (*Emphases and underscoring added)*

Clearly from the foregoing, the Court in Division acted accordingly within its authority to consider in the assailed Decision the issue on the defects of the waiver and assessment notice, notwithstanding that the parties have not raised the same in their pleadings or memoranda.

The CIR's right to assess and collect the subject deficiency taxes has prescribed due to the invalidity of the subject Waivers.

In the assailed Decision, the Court in Division ruled that the subject Waivers of the Defense of Prescription under the Statute of Limitations are not valid for failure to indicate the kind and amount of taxes to be assessed or collected. Such being the case, the same did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997, as amended. Hence, the right of the government to assess the subject deficiency taxes has prescribed.

The CIR, however, insists that the waivers are valid and binding. According to the CIR, RMO No. 20-90 and RDAO No. 05-01 are issuances that are merely internal and do not grant any vested rights to any taxpayer. As such, petitioner avers that the waivers need not comply with the foregoing issuances.

We sustain the ruling of the Court in Division.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the periods of limitation upon the assessment and collection of taxes, to wit:

> "Section 203. *Period of Limitation upon Assessment and Collection.* – **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphases and underscoring supplied*)

Based on the abovementioned provision, the period to assess and collect internal revenue taxes is within three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was actually filed, whichever comes later. Thus, assessments issued after the expiration of such period are no longer valid and effective.[22]

One of the exceptions, however, is provided under Section 222(b) of the NIRC of 1997, as amended, where the taxpayer and the CIR can agree in writing to extend the prescriptive period to assess deficiency taxes before the expiration date, to wit:

> "Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx

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[22] *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.,* G.R. No. 220835, July 26, 2017.

> **(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement before the expiration of the period previously agreed upon."

Verily, such agreement is called a *Waiver of the Defense of Prescription under the Statute of Limitations.* The said waiver is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[23] The issuance of a waiver is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[24]

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[25] the Supreme Court emphasized that a waiver must be executed in strict compliance with the procedures laid down under Revenue Memorandum Order (RMO) No. 20-90[26] and Revenue Delegation Authority Order (RDAO) No. 05-01,[27] otherwise, the Waiver is considered void and the three-year prescriptive period to assess is deemed not extended.

Anent the CIR's argument that the subject Waivers need not strictly comply with RMO No. 20-90 since an RMO is just an internal issuance that do not grant any vested right to any taxpayer, the Court *En Banc* is not persuaded.

As correctly explained by the Court in Division, RMO No. 20-90 is an administrative issuance that has the force and effect of law.[28] They benefit from the same presumption of validity and constitutionality enjoyed by statues.[29] Unfortunately, apart from bare

[23] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et.seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[24] Id, *citing Commissioner of Internal Revenue vs. Kudos Metal.*
[25] G.R. No. 178087, May 5, 2010.
[26] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code. Issued on April 4, 1990.
[27] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations. Issued on August 2, 2001.
[28] *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et. al.*, G.R. No. 173863, September 15, 2010.
[29] *Pantaleon et. al., vs. Metro Manila Development Authority*, G.R. No. 194335, November 17, 2020.

assertion, the CIR did not present any evidence to overcome the presumption of validity of RMO No. 20-90.

In this case, the Court in Division scrutinized the Waivers executed on September 7, 2012,[30] November 27, 2012,[31] February 22, 2013[32] and October 2, 2013[33] and found that the said Waivers are invalid for failure to indicate material details such as the nature and the amount of the tax due, citing the case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*[34] *(La Flor case)*, the Supreme Court held, to wit:

> "In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and **<u>must indicate the nature and amount of the tax due,</u>** to wit:
>
> **These requirements are mandatory and must strictly be followed**. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>
> xxx xxx xxx
>
> **<u>In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected.</u> As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information**. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by

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[30] Exhibit "P-40", Division Docket (CTA Case No. 9000) – Vol. 3, p. 1357.
[31] Exhibit "P-41", Division Docket (CTA Case No. 9000) – Vol. 3, p. 1358.
[32] Exhibit "P-42", Division Docket (CTA Case No. 9000) – Vol. 3, p. 1359.
[33] Exhibit "P-43", Division Docket (CTA Case No. 9000) – Vol. 3, p. 1360.
[34] G.R. No. 211289, January 14, 2019.

> the CTA, the same conclusion would be reached – the assessments had prescribed as there was no valid waiver." (*Emphases and underscoring added*)

Based on the ruling of *La Flor,* the Supreme Court held that the waivers extending the prescriptive period of tax assessment must indicate the specific tax and the exact amount to be assessed. Such are material details and the absence thereof shows that there can be no true and valid agreement between the taxpayer and the CIR. Indeed, the Supreme Court invalidated waivers that did not strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01, such as but not limited to: xxx (i) failure to specify the kind and amount of tax due; xxx."[35]

It bears noting that in Revenue Memorandum Circular (RMC) No. 29-12, the BIR clarified that the form of the Waiver prescribed under RMO No. 20-90 no longer applies starting August 2, 2001 but the revised form as prescribed under RDAO No. 05-01, to wit:

> "The aforecited Supreme Court decision pertains to a case involving tax assessment for the year 1994 and a waiver executed in 1997. Thus, in resolving the case, the relevant BIR issuance is RMO No. 20-90 and not RDAO No. 05-01 which took effect only in 2001.
>
> **The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01.**"

Considering that the Waivers executed in this case were issued beyond August 2, 2001, the applicable form of the Waiver to be followed is the one prescribed under RDAO No. 05-01 which is quoted as follows:

> "WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE
>
> I, ______ of ______ request for approval by the Commissioner of Internal Revenue for more time to submit

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[35] *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021.

> the documents required in connection with the investigation/ reinvestigation/ reevaluation/ collection enforcement of my/ its _______ tax liabilities for the year ______. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than _______.
>
> The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Sections 204 and 229 of the National Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue."

Based on the foregoing prescribed form in RDAO No. 05-01, the amount of taxes due is not required to be indicated in the Waiver. However, it is still required that the specific type of tax must be indicated in the Waiver.

Here, the subject Waivers, however, failed to satisfy this requirement. Thus, the Court *En Banc* finds the subject Waivers to be defective for failure to indicate the type of taxes. As such, the Court in Division committed no error when it ruled that the subject Waivers were invalid and, as a result, did not extend the prescriptive period under Section 203 of the NIRC of 1997, as amended. MJ

Nevertheless, even granting that the subject Waivers are valid, the same is of no moment since the subject tax assessment is void.

FPIC's right to due process was violated for failure of the CIR to faithfully comply with the mandate under Section 228 of the NIRC of 1997, as amended. Hence, the subject tax assessment is void.

Section 228 of the NIRC of 1997, as amended, reads, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* – x x x
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**" (*Emphasis added*)

Relative thereto is Section 3.1.3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which provides:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> *3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void.** (see illustration in ANNEX 'B' hereof). xxx xxx xxx ." (*Emphases added*)

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The foregoing provision prescribes that as part of due process in the issuance of tax assessments, the FLD/FAN must state, among others, the facts upon which the assessments are based; otherwise, the FLD/FAN shall be void.

In this case, as stated in the PAN,[36] the CIR ascertained that FPIC has deficiency taxes broken down as follows:

Type of Tax	***Basic Due***	***Interest***	***Compromise Penalty***	***Total***
IT	₱61,419,724.89	₱50,683,893.53	₱50,000.00	₱112,153,618.42
VAT	2,584,751.10	2,247,671.23	25,000.00	4,857,422.32
WTC	17,591,449.95	15,393,723.60	25,000.00	33,010,173.56
FT	3,368,935.68	2,948,049.47	25,000.00	6,341,985.15
FBT	852,157.52	745,696.20	20,000.00	1,617,853.73
DST	43,534.63	38,334.33	8,500.00	101,252.62
Total Deficiency				**₱158,082,305.80**

Moreover, as indicated in the *Details of Discrepancies* in the PAN,[37] the following are significant findings of the CIR, to wit:

1. For the deficiency IT:
   a) Unaccounted Income due to undeclared Purchases – ₱13,220,939.86
   b) Disallowed Additional deductions per Optional Standard Deduction (OSD) – ₱59,600,956.67
   c) Salaries and wages not subjected to withholding tax – ₱61,665,060.72
   d) Overstatement of Depreciation Expense – ₱70,245,459.04

2. For deficiency VAT
   a) Unaccounted Income due to undeclared Purchases – ₱16,661,816.95
   b) Undeclared Income – ₱4,877,775.51

3. For deficiency FT
   a) Basic deficiency tax – ₱3,368,935.68

4. For deficiency FBT
   a) Basic deficiency tax – ₱852,157.52

5. For deficiency DST
   a) Basic deficiency tax – ₱43,534.63

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[36] Exhibit "P-44", Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1361 to 1368.
[37] *Id.*

In reply to the same PAN, FPIC filed the letter dated June 23, 2014 with the CIR,[38] refuting, or explaining, against the above-stated findings thereof.

However, in the FLD with Details of Discrepancies[39] and FAN,[40] FPIC was still assessed the following deficiency tax liabilities:

Type of Tax	***Basic Due***	***Interest***	***Compromise Penalty***	***Total***
IT	₱61,419,724.89	₱52,198,352.50	₱50,000.00	₱113,668,077.39
VAT	2,584,751.10	2,311,404.82	25,000.00	4,921,155.91
WTC	17,591,449.95	15,827,485.38	25,000.00	33,443,935.34
FT	3,368,935.68	3,031,119.12	25,000.00	6,425,054.80
FBT	852,157.52	766,708.30	20,000.00	1,638,865.83
DST	43,534.63	39,407.79	8,500.00	102,326.07
Total Deficiency				**₱160,199,415.34**

It is noteworthy, however, that the foregoing assessments are exactly based on the same findings as stated in the PAN. The only difference between the said PAN and the subject FLD-FAN is that the amounts of interest were adjusted. The respective basic tax due substantially remained the same. In other words, the CIR merely reiterated the same findings as stated in the said PAN, without considering or explaining the grounds for rejecting the refutations and explanations made by FPIC in its letter dated June 23, 2014. To stress, without addressing the said refutations and explanations, the CIR did not give the particular facts upon which the FLD-FAN are based.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.,*[41] (*Avon* case), the Supreme Court declared as void the tax assessment because of the CIR's total disregard of taxpayer's due process rights as mandated by Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended. Specifically, the Supreme Court held that the CIR failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it. Moreover, the taxpayer was left unaware on how the CIR or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment. The relevant portions of the said decision are quoted below: *mt*

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[38] Exhibit "P-45", Division Docket (CTA Case No. 9000) – Vol. 3, pp. 1369 to 1377.
[39] Exhibit "R-13", BIR Records, pp. 848 to 854.
[40] Exhibit "R-14", BIR Records, pp. 842 to 847.
[41] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

"Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, <u>but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.</u>

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<u>The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.</u> Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, <u>Section 3.1.4[42] requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.</u> xxx xxx xxx

The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory'. <u>**This is an essential requirement of due process and applies to the**</u> Preliminary Assessment Notice, <u>**Final Letter of Demand with the Final Assessment Notices**,</u> and the Final Decision on Disputed Assessment.

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The facts demonstrate that **Avon was deprived of due process**. **It was not fully apprised of the legal and factual bases of the assessments issued against it.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal

[42] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.

> Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representative appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
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> xxx xxx xxx
>
> In *Commissioner of Internal Revenue v. Reyes,*[43] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code**. (*Emphases and underscoring added*)

Based on the foregoing pronouncement by the Supreme Court in the *Avon* case, it is clear that in issuing tax assessments, the CIR or his duly authorized representative is mandated to perform their duty in accordance with, and in strict adherence to the law, their own rules of procedure, and always with regard to the basic tenets of due process. In case the CIR or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void and of no force and effect.

Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer, FPIC in the instant case, must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the FLD-FAN. Specifically, the CIR or his duly authorized representative must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must **not** be left unaware on how the CIR or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

It bears stressing that in case the CIR or his duly authorized representative fails or effectively fails to observe the foregoing due

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[43] 516 Phil. 176 (2006)

process requirements, it shall have the effect of rendering the assessment and collection of the deficiency tax void.

In view of the findings that the subject tax assessment is void for having been issued in violation of FPIC's right to due process, the same therefore bears no valid fruit.[44]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated February 24, 2020 and the Resolution dated October 9, 2020 rendered by the Second Division of this Court in CTA Case No. 9000 is **AFFIRMED**.

Consequently, the CIR or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against respondent FPIC during the pendency of the instant case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I concur solely on the ground elucidated on pages 17 to 24 of the ponencia)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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[44] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. Nos. 197945 and 204119-20, July 9, 2018, citing *Commissioner of Internal Revenue vs. Reyes,* G.R. Nos. 159694 and 163581, January 27, 2006.

(With due respect, I join the Concurring and Dissenting Opinion of Justice Catherine T. Manahan)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join Justice Catherine T. Manahan's Concurring and Dissenting Opinion)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Respondent.

CTA EB No. 2376

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

SEP 29 2022 1:20pm

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I respectfully concur with the overall result of the Decision of the majority in cancelling the deficiency tax assessments for taxable year 2009 but only on the ground of prescription due to the invalidity of the waivers executed by the parties on September 7, 2012, November 27, 2012 and February 22, 2013.

A careful scrutiny of the subject waivers made by the Court in Division and affirmed by the majority of my esteemed colleagues yielded the conclusion that they lacked an essential element to render the same valid. The form of waiver outlined by Revenue Delegation Administrative Order (RDAO) No. 05-01 provides that the amount of taxes due must be specified. In several cases,[1] the Supreme Court took note of the fact that there are waivers that did not specify the kind of tax and the amount of tax due thereon and ruled that "*there can be no agreement if the kind and amount of the taxes to be assessed or*

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[1] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015 and *Commissioner of Internal Revenue vs. Systems Technology Institute*, Inc., G.R. No. 220835, July 26, 2017. *om*

collected were not indicated. Hence, specific information in the waiver is necessary for its validity."

I concur with the majority of my colleagues that the defective waivers did not validly extend the prescriptive period to assess respondent's deficiency taxes for taxable year 2009, hence the Formal Letter of Demand and Final Assessment Notices (FLD/FANs) must accordingly be canceled and set aside.

In affirming the assailed Decision of the Second Division's decision dated February 24, 2020, I however express my disagreement to the conclusion that the subject assessments are void since respondent's tax liabilities remain indefinite.

A close perusal of the FLD/FANs would reveal that they contain a fixed and definite amount of deficiency taxes due from respondent and it is only the deficiency interest that needs to be adjusted depending on the date when the respondent shall fully settle the amount. This to my mind, does not make the tax liabilities of the respondent indefinite to render the FLD/FANs void. I share the view of my esteemed colleague, Justice Jean Marie A. Bacorro-Villena, in her Concurring and Dissenting Opinion dated February 24, 2020, when she maintained, thus:

> "What is crucial in determining the validity of the assessment is the definiteness of the amount indicated in the FLD and the deadline for payment (shown in the assessment notices attached to the FLD). If the FLD substantially satisfies both requirements, then the FLD could not be found wanting or that the assessment be deemed void. It is true that while the computation of interest may not yet appear definite, the same is only logical as the BIR could not be reasonably expected to foresee when the taxpayer will actually settle its tax obligation."

Lastly, and with all due respect to the majority, I submit that the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products,*[2] must be applied sparingly and not in all cases where the findings of the Commissioner of Internal Revenue embodied in the FAN reflect the same and/or identical conclusions with that stated in the Preliminary Assessment Notice (PAN) as the latter still has the prerogative to reiterate her findings in the FAN after considering inadequate and un-supportive the arguments and theories that may be propounded by the taxpayer in its protest.

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[2] G.R. Nos. 201398-99/G.R. Nos. 201418-19, October 3, 2018.

All things considered, I vote to cancel the tax deficiency assessments for taxable year 2009 on the ground of prescription of petitioner's right to assess.

CATHERINE T. MANAHAN
Associate Justice